



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

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Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Data Calibrations and Harvest Levels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in two framework actions under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule modifies the state-specific red snapper private angling components annual catch limits (ACLs) to reflect each state's monitoring program. In addition, this final rule modifies commercial and recreational sector and recreational component red snapper ACLs and annual catch targets (ACTs) in the Gulf exclusive economic zone (EEZ). The purpose of this final rule is to calibrate Gulf red snapper state private angling component ACLs to reduce the likelihood of overfishing, to increase the Gulf red snapper

ACLs and ACTs consistent with the best scientific information available, and to continue to achieve optimum yield (OY) for the stock.

DATES: This final rule is effective January 1, 2023.

ADDRESSES: Electronic copies of the framework actions, which include environmental assessments, regulatory impact reviews, and Regulatory Flexibility Act (RFA) analyses, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/red-snapper-data-calibrations-and-catch-limit-modifications>.

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SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act).

On June 28, 2022, NMFS published a proposed rule for the framework actions and requested public comment (87 FR 38366). The proposed rule and the framework actions outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework actions and implemented by this final rule is described below.

Unless otherwise noted, all weights in this final rule are in round weight.

This final rule implements management measures for both the Gulf of Mexico Red Snapper Recreational Data Calibration and Recreational Catch Limits Framework Action (Calibration Framework) and the Modification of Annual Catch Limits for Gulf of Mexico Red Snapper Framework Action (Catch Limits Framework). Briefly, the Calibration Framework modifies the state-specific red snapper private angling component ACLs using the calibration ratios developed by NMFS' Office of Science and Technology (OST) and the Gulf states. The Catch Limits Framework increases the red snapper overfishing limit (OFL), acceptable biological catch (ABC), ACLs, and ACTs consistent with the red snapper interim analyses and recommendations from the Council's Scientific and Statistical Committee (SSC). These two framework actions are combined in this single final rule because both actions adjust the red snapper catch limits.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and

recreational opportunities, and protecting marine ecosystems.

Red snapper in the Gulf EEZ is harvested by both the commercial and recreational sectors. Each sector has its own ACL and associated management measures. The stock ACL is allocated 51 percent to the commercial sector and 49 percent to the recreational sector. The stock ACL for red snapper is equal to the ABC. The recreational ACL (quota) is divided between the Federal for-hire component (42.3 percent), which includes operators of federally permitted charter vessels and headboats (for-hire vessels), and the private angling component (57.7 percent), which includes private anglers.

In February 2020, NMFS implemented state management of red snapper for the private angling component through Amendments 50 A-F to the FMP (85 FR 6819, February 6, 2020). Under state management, each state was allocated a portion of the red snapper private angling component ACL and was delegated the authority to set the private angling fishing season, bag limit, and size limit. These amendments also established an accountability measure that required any overage of a state's ACL to be deducted in the following year (*i.e.*, a payback provision).

The Calibration Framework

The Calibration Framework describes in detail the various data collection programs used to estimate red

snapper landings by private anglers. Until recently (2014), NMFS provided the only estimates of private angler red snapper landings in all of the Gulf states, except Texas. Texas anglers have never participated in the NMFS recreational data collection survey. In 2014, Alabama and Louisiana, and in 2015, Florida and Mississippi, implemented state data collection programs to collect this private angler information. Each of these programs is unique and NMFS has observed differences (sometimes substantial) between Federal estimates of recreational catch and each state's own estimate. Specifically, the Alabama and Mississippi surveys tend to generate much lower landings estimates than the Federal survey.

The current red snapper catch limits (OFL, ABC, ACLs, and ACTs) are based, in part, on private-angling landings estimated using the Federal data collection system, and NMFS uses the estimates from the Federal survey to determine whether landings exceed the total recreational ACL (quota) and the stock OFL. However, each Gulf state manages the harvest by its private anglers using estimates from its own state data collection program. The Federal Marine Recreational Information Program (MRIP) based catch limits for Florida, Alabama, Mississippi, and Louisiana are not directly comparable to the landings estimates generated by each of those states, and the state estimates are not directly comparable to each other. In other words, each

state is estimating landings in a different "currency." Therefore, the NMFS OST worked with the Gulf States to develop calibration ratios so that each state's catch limit could be converted from the Federal "currency" to the currency in which each state monitors landings.

The current systems each state uses to manage private angling harvest have resulted in exceeding the total recreational ACL (quota) and the OFL. In 2018 and 2019, the private angling component ACL and recreational ACL were exceeded even though the Federal for-hire component landings did not exceed the for-hire component ACL. In 2019, total red snapper landings exceeded the OFL.

To address this issue, the Council developed the Calibration Framework and selected as preferred the alternative that uses the calibration ratios to adjust each state's ACL into the currency in which that state monitors landings. These ratios are: Alabama (0.4875); Florida (1.0602); Louisiana (1.06); Mississippi (0.3840); Texas (1.00). The MRIP-based ACLs are multiplied by the ratios to determine the state currency ACLs. The preferred alternative also included an implementation date of January 1, 2023. The Council concluded that this delay in implementation would afford the Gulf states and the NMFS OST an opportunity to resolve the differences in state-specific data collection programs and MRIP-Fishing Effort Survey (FES) (e.g., scale and precision of catch estimates),

as recommended by both the Council's SSC (during discussion at several SSC meetings) and a 2021 National Academy of Sciences report to Congress.

In February 2022, NMFS OST and the Gulf states participated in a workshop on the transition to the use of state survey catch data in Gulf fisheries. The purpose of the workshop was to agree on the elements of a transition plan for the Gulf state recreation fishing surveys. The transition plan was published in August 2022, and can be found at <https://media.fisheries.noaa.gov/2022-10/Gulf%20Transition%20Plan%20Final.pdf>.

The Catch Limits Framework

In 2019, NMFS implemented a framework action that set the current red snapper catch limits (85 FR 6819, February 6, 2020). These catch limits are based on most recent Gulf red snapper Southeast Data, Assessment, and Review stock assessment (SEDAR 52), completed in 2018, and the Council's SSC recommendations. The current red snapper stock OFL is 15.5 million lb (7.0 million kg), the stock ABC and stock ACL are 15.1 million lb (6.8 million kg). The commercial ACL is 7.701 million lb (3.493 million kg), and the recreational ACL is 7.399 million lb (3.356 million kg). The Federal for-hire component ACL is 3.130 million lb (1.420 million kg) and the private angling component ACL is 4.269 million lb (1.936 million kg). The Federal for-hire component ACT is 2.848 million lb (1.292 million kg) and

the private angling component ACT is 3.415 million lb (1.5498 million kg). The commercial sector does not have a sector ACT because it is managed under an individual fishing quota (IFQ) program that effectively constrains landings to the commercial ACL. The 2019 framework also set the Federal for-hire component ACT at 9 percent below its ACL. The for-hire component ACT is in place to reduce the likelihood of exceeding the for-hire ACL, as well as the total recreational ACL. A private angling component ACT is set 20 percent below the private angling ACL, but would only be used if a Gulf state did not have an active delegation under the red snapper state management program.

In 2016, Congress awarded funding to researchers in an effort to independently estimate the population size of red snapper in the Gulf. Commonly known as the "Great Red Snapper Count" (GRSC), this project's primary goal was to provide a snapshot of estimate abundance and distribution of age 2 and older red snapper on artificial, natural, and uncharacterized bottom habitat across the northern Gulf through 2019. At its April 2021 meeting, the Council was briefed on the preliminary results of the GRSC. The GRSC estimated the abundance of red snapper in the Northern Gulf was approximately three times greater than had been estimated in the previous stock assessment (SEDAR 52).

The Southeast Fisheries Science Center (SEFSC) worked collaboratively with the GRSC investigators to develop a

method that could be used to integrate the results of the GRSC into catch limit advice that is currently based on SEDAR 52. The SEFSC developed catch projections using GRSC estimates of abundance to scale projections that initially used abundance estimates from SEDAR 52. The SEFSC also developed catch level projections based on an interim analysis using information from the NMFS Bottom Longline (BLL) survey from 2000 through 2020, which was similar to the approach previously used for Gulf red grouper and gray triggerfish projections. The NMFS BLL survey is an annual survey that can be used to determine long-term trends in the abundance of a stock.

The SSC reviewed both sets of projections at its March 30 - April 2, 2021, meeting. The SSC expressed some concerns about using the GRSC findings to recommend catch levels. Specifically, the SSC noted the uncertainty associated with the GRSC biomass estimate, questions about the productivity of the red snapper stock that are raised by the GRSC findings (that the productivity of the stock appears to be lower than previously assumed), and the declining trend observed recently in the NMFS BLL survey. Based on these concerns, and until additional information could be presented related to the SSC's questions about some aspects of the GRSC, the SSC determined that it was appropriate to use the GRSC based interim analysis to recommend the OFL, which would be used determine if

overfishing is occurring, but not to use the GRSC to recommend the ABC, which constrains the total allowable catch that may be specified by the Council.

For the OFL recommendation, the SSC decided to use the projection based on the abundance of all red snapper over structure (artificial reef, natural reef, and pipeline) and 13 percent of the abundance from the unclassified bottom, and used a 3-year average of the maximum sustainable yield proxy for Gulf red snapper (the mortality corresponding to a 26 percent reduction in the spawning potential ratio from an unfished condition). This OFL for Gulf red snapper is 25.6 million lb (11.6 million kg). With respect to the ABC, the SSC determined that 2020 BLL survey data should not be used for this interim analysis because of the low sample size and high coefficient of variation for those data that were likely the result of the COVID-19 pandemic, and recommended that the catch advice be derived from the 5-year average. Based on these selections, the Council's SSC provided an ABC recommendation for Gulf red snapper of 15.4 million lb (7.0 million kg). This recommendation reflects the SSC's determination that the ABC should be considerably more conservative than the OFL, at least until the SSC questions related to the GRSC are more thoroughly explored.

The SSC has reviewed new information related the GRSC on several occasions, including at its March 2022 meeting. At that same meeting, the SEFSC presented an analysis that

used the updated GRSC information, and the SSC made new catch level recommendations based on this new analysis. These new recommendations decrease the OFL to 18.91 million lb (8.58 million kg) and increase the ABC to 16.31 million lb (7.40 million kg). In August 2022, the Council finalized a new framework action to adjust the red snapper catch limits consistent with these recommendations. In October 2022, the Council submitted the new framework action and proposed regulations to NMFS for review.

The Council approved both the Data Calibration Framework Action and the Catch Limits Framework Action at its April 2021 meeting. However, NMFS expressed concern about the Council's proposal to delay implementation of the Calibration Framework until 2023, and requested that the Council reconsider that implementation timing. The Council discussed the request at its August 2021 meeting but did not make any changes to the implementation date of the preferred alternative.

Management Measures Contained in this Final Rule

This final rule modifies the state-specific red snapper private angling component ACLs using the calibration ratios adopted by the Council, and increases the red snapper ACLs and ACTs consistent with the red snapper interim analyses and the subsequent SSC recommendations. The calibrations are necessary to convert the state private angling component ACLs into the same

currency in which each state monitors landings by the private angling component. This will reduce the likelihood of exceeding the red snapper private angling component ACL, the total recreational ACL, and the OFL.

ACLs and ACTs

This final rule increases the Gulf red snapper catch limits. The stock ACL will increase from 15,100,000 lb (6,800,000 kg) to 15,400,000 lb (7,000,000 kg). The commercial ACL (commercial quota) will increase from 7,701,000 lb (3,493,000 kg) to 7,854,000 lb (3,562,514 kg), and the recreational ACL (recreational quota) will increase from 7,399,000 lb (3,356,000 kg) to 7,546,000 lb (3,422,808 kg). The for-hire component recreational ACL will increase from 3,130,000 lb (1,420,000 kg) to 3,191,958 lb (1,447,848 kg). The private angling component recreational ACL will increase from 4,269,000 lb (1,936,000 kg) to 4,354,042 lb (1,974,960 kg). In addition, the private angling recreational ACT will increase from 3,415,000 lb (1,549,000 kg) to 3,483,234 lb (1,579,968 kg).

For the Federal for-hire component, the Council chose to maintain the current buffer between the ACL and ACT at 9 percent to minimize the risk of ACL overages. Therefore, as a result, the for-hire component ACT will increase from 2,848,000 lb (1,292,000 kg) to 2,904,682 lb (1,317,542 kg).

Because of the increased recreational private angling component ACL in this final rule, each Gulf state will be

initially allocated an increase in their specific state private angling component ACL. Alabama's ACL will increase from 1,122,662 lb (509,231 kg) to 1,145,026 lb (519,375 kg); Florida's ACL will increase from 1,913,451 lb (867,927 kg) to 1,951,569 lb (885,217 kg); Louisiana's ACL will increase from 816,233 lb (370,237 kg) to 832,493 lb (377,612 kg); Mississippi's ACL will increase from 151,550 lb (68,742 kg) to 154,568 lb (70,110 kg); and Texas's ACL will increase from 265,105 lb (120,250 kg) to 270,386 lb (122,645 kg). The above changes to individual state catch limits are based on the Catch Limits Framework. These are not the final catch limits that will be implemented through this final rule and they are not included in the codified text in this rule because the calibration ratios need to be applied as described in the following paragraph.

Each Gulf state's private angling component ACL denoted in the prior paragraph was modified by applying the calibration ratios adopted by the Council. The final private angling component ACLs followed by the Federal equivalent are as follows: the Alabama private angling component ACL will be 558,200 lb (253,195 kg) or Federal equivalent of 1,145,026 lb (519,375 kg); the Florida private angling component ACL will be 2,069,053 lb (938,507 kg) or Federal equivalent of 1,951,569 lb (885,217 kg); the Louisiana private angling component ACL will be 882,443 lb (400,269 kg) or Federal equivalent of 832,493 lb (377,612

kg); the Mississippi private angling component ACL will be 59,354 lb (26,923 kg) or Federal equivalent of 154,568 lb (70,111 kg); and the Texas private angling component ACL (equal to Federal) will be 270,386 lb (122,645 kg). Each state will use its reporting system to monitoring landings and appropriately constrain harvest to its ACL. NMFS will convert the state landings estimates to the Federal currency to determine whether landings have been constrained to the private angling ACL, total recreational ACL (quota) and OFL. This is necessary because the private angling ACL, total recreational ACL (quota) and OFL will remain in the Federal currency.

Minority Report

A minority report signed by three Council members raised objections to the Council's decision to approve the Calibration Framework with an implementation date of January 1, 2023, included in the preferred alternative. These Council members were concerned that delaying implementation until 2023 would allow 2 additional fishing years (2021 and 2022) where the private angling component of the recreational sector would be allowed to catch more than its allocation of red snapper. The minority report is available at the website: <https://gulfcouncil.org/wp-content/uploads/Council-Minority-Report-FINAL-Signatures.pdf>.

Comments and Responses

NMFS received 39 comments on the proposed rule, including one comment that contained signed letters as part of a petition. The petition, which is in favor of the Calibration Framework, had 7,351 individual signatures. In general, commercial fishermen and environmental non-government organizations supported the calibration action. Overall, 16 comments were received in support of the Calibration Framework (including the petitioners above) and 16 were opposed. Two commenters supported the calibration action but did not support the catch limit increase. Several additional comments were received on topics that are outside the scope of the proposed rule and framework actions. These included comments addressing state management issues, allocation decisions and the suggestion that the Council initiate an allocation review for red snapper, issues about the red snapper commercial fishery, recreational bag limit changes, the composition of the Gulf Council, and recreational discard accounting.

Comments specific to the framework actions and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: NMFS should implement the calibration ratios as proposed without further delay as recommended in the Council's minority report. The lack of calibration has masked large recreational overharvests. The private angling component of the recreational sector exceeded its quota

from 2018-2021 by a total of more than 4.1 million lb (1.9 million kg), resulting in the overall recreational sector exceeding its quota by more than 2 million lb (0.9 million kg) over the same time period. Those quota overages have not been paid back as required. Calibration to a "common currency" is necessary to comply with the Magnuson-Stevens Act.

Response: NMFS agrees that red snapper calibration ratios are needed and they will be implemented along with the catch limit increases through this final rule. These changes will be effective January 1, 2023. It is unlikely that the rule could be made effective for the 2022 fishing year. Further, the Gulf States set their 2022 management measures based on the ACLs that have been in effect since the beginning of the year. Applying the calibration ratios and adjusting those ACLs at the end of the year does not provide the opportunity for the states to adjust their management strategies.

NMFS has been forthcoming about the different estimates produced by the Gulf State surveys and MRIP, and recognizes that the lack of the calibrated state ACLs has allowed the combined catch from the Gulf States to exceed the private angling component ACL. NMFS expects the calibrated state ACLS implemented through this final rule to help constrain harvest to the Federal catch limits established in Amendments 50A-F and increased through this

final rule, and reduce the likelihood of exceeding the total recreational ACL and the OFL.

With respect to the payback of prior overages, this requirement was adopted to encourage each state to adopt management measures that constrain harvest to the state ACL. When state reported landings have exceeded the codified state ACLs, NMFS has implemented paybacks to address the overages for: Texas in 2020 and 2021 (for overages of their ACL in 2019 and 2020), Louisiana in 2020 and 2022 (overages in 2019 and 2021), and Florida in 2022 (overage in 2021). NMFS has not implemented paybacks for Mississippi or Alabama because landings estimates provided by these states have not exceeded their codified ACLs. The calibrated state ACLs implemented through this final rule will allow NMFS to directly compare each state's landings estimate to its ACL and implement any necessary payback.

Comment 2: The MRIP data are flawed and the calibration ratios should not be considered best scientific information available for that reason. Additionally, NMFS is not using the best scientific information available to set catch limits as described in the Catch Limits Framework because the SSC provided the Council with new OFL and ABC recommendations.

Response: NMFS has determined that both the calibration ratios and catch limit modifications as described in the framework actions and this final rule are

based on the best scientific information available as required by National Standard 2 of the Magnuson-Stevens Act. The Federal surveys have been heavily tested, scrutinized, and reviewed, and NMFS remains committed to continue improving both state and Federal survey methods, all of which are subject to sampling and non-sampling errors (measurement, coverage, and non-response). MRIP uses standardized designs across states, which ensures comparability of estimates. Conversely, due to the differing designs by the Gulf States, it is not possible to directly compare the estimates derived from the state surveys to each other or to the estimates produced by MRIP. The state ACLs were derived, in part, based on private-angling landings estimated using MRIP. Applying the state specific calibration ratio to each state's MRIP-based ACL will allow each state's landings estimate to be compared directly that state's ACL.

The calibration ratios were developed in partnership with experts from the Gulf States and reviewed by a team of independent experts and the Gulf Council's SSC. The catch limit increase is based on interim analyses conducted by the SEFSC and the recommendation of the SSC. The SEFSC has since conducted a new interim analysis and the SSC has made new catch level recommendations, which the Council adopted in a subsequent framework action. NMFS is reviewing the proposed regulations associated with the new framework

action and will publish a proposed rule to implement those regulations if NMFS determines that they are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

Comment 3: Alabama and Mississippi have better programs in place to estimate red snapper recreational catch than MRIP, and NMFS does a poor job of tracking red snapper recreational catch. For example, the Mississippi "Tails n' Scales" recreational reporting program, when compared to MRIP, has a greater response rate, is more accurate, has a lower standard error, has less fluctuations of harvest estimates across years, and is more consistent across seasons and years. Alabama and Mississippi's catch reporting programs suggest the rest of the Gulf States are actually overestimating red snapper recreational catch.

Response: NMFS agrees that the Alabama and Mississippi surveys tend to generate much lower landings estimates than the Federal survey, and that the Alabama Snapper Check and the Mississippi Tails n' Scales programs are designed to produce more precise and timely estimates of catch. However, because the state ACLs were derived using Federal estimates of recreational catch, calibrations are needed to convert the state ACLs to the same scale that each state uses to monitor landings. Stated differently, because the Alabama and Mississippi surveys produce lower estimates of landings than the survey used to set those state's ACLs,

anglers from Alabama and Mississippi have been allowed to land more red snapper than contemplated by the Council when developing Amendments 50A-F.

In addition, the fact that the Alabama and Mississippi surveys result in lower estimates than MRIP does not necessarily mean that the other states are overestimating landings. It is difficult to know which surveys provide the best estimates of catch. Different statistical sampling designs can produce different estimates due to variations in sampling frames and non-sampling error such as coverage error, nonresponse error, and measurement error. It is not unusual for established surveys to produce very different estimates for the same population parameter. NMFS explained the different state surveys, including key survey design assumptions and potential for bias in the 2019 publication, "Recommended Use of the Current Gulf of Mexico Surveys of Marine Recreational Fishing in Stock Assessments," available at <https://media.fisheries.noaa.gov/dam-migration/94100569.pdf>. The Transition Plan for Gulf State Recreational Fishing Surveys includes a research track to identify and quantify non-sampling errors in survey designs of all participating partner programs and may lead to design improvements in those assessments to reduce non-sampling errors and the magnitude of differences in catch estimates among the unique data programs.

Comment 4: While calibration is necessary, MRIP should

not be used for estimating recreational landings in the Gulf because it was not designed to generate estimates on a smaller geographic scale (e.g., the 44 miles (71 km) of Mississippi coastline) and for shorter periods of time. Therefore, this rule is arbitrary and capricious because it relies on flawed data to cut Mississippi's recreational red snapper private angling allowable harvest by 60 percent.

Response: NMFS disagrees that MRIP should not be used to estimate recreational landings in the Gulf. Until 2014, MRIP, and its predecessor the Marine Recreational Fisheries Statistics Survey (MRFSS), were the only surveys available to estimate private angler red snapper landings in all of the Gulf States, except Texas. MRIP remains the only survey available to estimate private angler landings of many other federal managed species. For example, reporting to the Mississippi Tails n' Scales program is only required for recreational anglers fishing for red snapper, although anglers are also asked to report data on gray triggerfish and greater amberjack. NMFS has determined that the calibrations implemented through this final rule are not arbitrary and capricious. For the reasons explained previously, the calibrations are necessary to allow each state's landings estimates to be directly compared to its ACL.

Comment 5: Many states do not use the Federal survey to estimate recreational landings. States with more

resources, such as California, Oregon, and Washington, transitioned away from the Federal survey without undergoing calibration. In the Gulf, Texas never participated in the Federal survey program and is allowed simply to continue using its state data to comply with Amendment 50, and Louisiana stopped participating in MRIP in 2016. This does not seem fair to the other Gulf States.

Response: California, Oregon, and Washington discontinued the Federal survey in 2004 prior to the first National Academy of Sciences review and the establishment of MRIP. At that time, Oregon and Washington had been conducting their own surveys for a number of years and were using MRFSS estimates to supplement those surveys. Further, NMFS did not have policies and procedures related to certification of new recreational catch and effort survey designs. California, Oregon, and Washington receive Federal funding through MRIP to support the state-conducted surveys and are currently going through MRIP certification reviews, consistent with NMFS Procedure 04-114-02 found at https://media.fisheries.noaa.gov/2021-06/04-114-02_06.28.2021_Howell%20signed.pdf?null. A requirement of certification is a transition plan, which will identify if there is a need for calibration.

With respect to the Gulf States, all of the states who participate in MRIP are being treated similarly with respect to calibrating their state specific red snapper

ACLs. Texas has never participated in the Federal survey to estimate catch, using the Texas Coastal Creel Survey for more than 40 years. Because the implementation of Amendments 50A-F did not change the way in which Texas landings are monitored, no calibration of the Texas ACL is necessary. Only Louisiana ceased to conduct the Federal surveys since MRIP was established in 2008. But Louisiana continues to receive funding from MRIP and to participate on MRIP teams, and this final rule applies the appropriate calibration ratio to Louisiana's red snapper ACL.

Comment 6: NMFS should proceed with caution and perform further analysis before moving forward with the catch limit increases. The proposed increase in ACLs and ACTs are coming at a time when a large number of data sources are indicating that the stock is experiencing a decline in abundance and localized depletion.

Response: NMFS understands there are concerns about the status of the stock, and localized depletion in particular. However, NMFS does not agree that it is appropriate to delay the increase in the catch limits, which is based on new information from the GRSC and the NMFS BLL survey, and the recommendations of the Council's SSC. A new stock assessment for Gulf red snapper is underway and expected to be complete in 2024. The new assessment includes a research track component that is used to build a robust assessment tool and an operational

component that provide analyses to support management advice with up-to-date data. NMFS expects the results of this new assessment to provide more information about the status of the red snapper stock, including whether there has been a decline in abundance. After the assessment is complete, it will be reviewed by the SSC and the Council will consider any appropriate changes to the catch limits or other management measures.

Comment 7: The two states most disadvantaged by this final rule, Mississippi and Alabama, have the lowest per capita income among the Gulf States and this should have been taken into account in developing the calibrations.

Response: NMFS does not have per capita or household income data for anglers that target or catch red snapper, in particular, and therefore cannot determine whether anglers in Mississippi and Alabama affected by this final rule are more disadvantaged than those in other Gulf States. NMFS does not believe that it would have been appropriate to consider this type of information in developing the calibrations, which are designed to allow a direct comparison between each state's estimated private angling red snapper landings and that state's private angling component ACL. To achieve that goal, the calibrations are based on how the catch estimates by the states compared to the Federal catch estimates, and did not differentiate between the states based on any other

factors.

Comment 8: NMFS did not use appropriate methods to calibrate MRIP recreational data to state data. NMFS used the Fay-Herriot model to calibrate MRIP-CHTS data to MRIP-FES, and should have used a similar model to calibrate the state data to MRIP data. Instead, NMFS decided to use a simple linear calibration.

Response: NMFS disagrees that it was inappropriate to use a linear calibration to adjust the state ACLs to be comparable with the method each state uses to estimate landings. The Fay-Herriot model used for the CHTS to FES calibration was specifically developed for that purpose and cannot be applied as designed to provide calibrations among the various survey designs that states in the Gulf employ. Given the limited data available and need to develop the calibrations in a timely manner, NMFS and the Gulf states agreed that the simple ratio-based approach should be used until it could be updated or replaced when additional data become available.

Comment 9: The calibration for Mississippi should have included 2020 data rather than only 2018 and 2019 data. NMFS has informally suggested that 2020 MRIP data should not be considered because pandemic-related disruptions resulted in some missing data. However, NMFS used imputation, a statistically valid method which replaces missing data with substituted values, to compensate for the

missing data, which created a usable landings estimates. Moreover, the percent standard error for 2020 data is consistent with other years, suggesting the data should be included. Inclusion of 2020 data for Mississippi would have been statistically more robust, and would have resulted in an increase in Mississippi's quota.

Response: NMFS disagrees that 2020 data should be used to revise the calibration ratio for Mississippi in this final rule. This data was not available when the calibration ratios were developed during the 2020 workshop or when the Council approved the Calibration Framework in April 2021. Any changes to the calibration ratios should be made through the Council process. In June 2022, the Council directed its SSC to review the calibration ratios using more recent state survey data and provide recommendations prior to the January 2023 Council meeting. NMFS is working with the Gulf states to update the calibration ratios, as appropriate, for review by the SSC at its January 2023 meeting. The Council can act to make any appropriate changes to the calibration ratios after the SSC presents its recommendations.

Comment 10: The Council's SSC recognized the shortcoming of the calibration and realized that Mississippi was being treated unfairly. In the minutes from the Council's SSC meeting of August 11-12, 2020, it states "The SSC recognized that the difference in methodology by

the state and Federal surveys should be explored further, as to not penalize a state when the difference after calibration greatly reduce the state's quota." This is exactly what was done with Mississippi. The Council's SSC minutes also state "the SSC also agreed that scaling a state's data to MRIP-FES is not the same as calibrating those data, and that scaling to MRIP-FES is tantamount to using the MRIP-FES data." Thus, the Council's SSC agreed that the Calibration Framework improperly dismissed nearly comprehensive data from the Mississippi Tails n' Scales program in favor of management using less appropriate MRIP-FES data.

Response: NMFS agrees that the Council's SSC has recognized shortcomings with the calibration ratios but does not agree that the SSC concluded that Mississippi was being treated unfairly or that the Calibration Framework improperly dismissed the Mississippi data. The SSC determined the methods used to generate conversion ratios between Gulf state surveys and MRIP data were appropriate for quota monitoring of the red snapper state specific ACLs. Those methods were developed in partnership with the Gulf states, including Mississippi, and with the input of independent statistical consultants.

Comment 11: Nearly 2 years ago, Congress appropriated \$2 million for NMFS to work on the calibration issue, and the issue still has not been adequately addressed.

Calibration was delayed to 2023 to find more effective ways to incorporate state data, but no changes were made to the calibration ratios. NMFS is ignoring explicit instructions from Congress to make no regulatory changes until it is determined which data estimation system (MRIP or state) is best.

Response: NMFS is not ignoring explicit instructions from Congress. Regardless of which surveys are determined to be "best," the current state ACLs were developed using MRIP estimates while the state surveys monitor harvest using different methods. The Mississippi and Alabama surveys produce significantly lower estimates of catch, and ignoring those differences has resulted in the private angling component exceeding its ACL and could result in overfishing of red snapper. Therefore, NMFS is implementing the calibration ratios consistent with the requirements of the Magnuson-Stevens Act. NMFS recognized the need to calibrate the state ACLs to each state's reporting system in the final rule implementing state management of red snapper. The calibration ratios were adopted by the Gulf Council after a fully transparent process that included thorough Council and SSC deliberation, coordination with the Gulf States, peer review, and extensive opportunity for public comment. Appropriations from Congress were used to work with the Gulf States to review the state and Federal surveys, look at possible improvements, identify how to

make those improvements, and complete a review of an updated calibration methodology. In February 2022, NMFS, its state partners, and a team of independent experts participated in a workshop to make the decisions necessary to develop a multi-year transition plan to support the use of Gulf state recreational fishing data in Federal stock assessments and management decisions. This plan includes two parallel paths, a transition path and a research path, with both short and long-term priorities. In the short-term, the transition path will make immediate progress on interim calibration of historical catch estimates using currently available data and ratio-based calibration methods. Long-term, as progress is made on the research path, the transition path will convene an independent review of model-based calibration procedures. This transition plan can be found at <https://media.fisheries.noaa.gov/2022-10/Gulf%20Transition%20Plan%20Final.pdf>.

NMFS acknowledges that when using MRIP that the general surveys may not meet some regional needs. To help meet those needs, regional implementation teams were established for MRIP to focus on the development of regional implementation plans in which data collection needs are described. Further, a goal of the development of state-specific surveys was to address the need for more timely and precise catch estimates to support short-season

fisheries. NMFS has supported the testing and implementation of these surveys and continues to do so. Part of the transition plan for the Gulf surveys is focused on research needs to identify sources of non-sampling error so that improvements can be made to the surveys to better position them for an independent review of calibration methods and make recommendations on calibration.

Comment 12: This final rule is not based on accurate science and ignores the Magnuson-Stevens Act's explicit instruction to achieve OY because NMFS and the Council are ignoring the GRSC in developing the proposed ACLs. Specifically, the GRSC found that there are approximately three times more fish than was previously thought. Before the GRSC, the stock ACL was set 3 percent below the OFL. Now that NMFS knows there are three times more fish than previously thought, the proposed stock ACL is set 40 percent below the OFL and was based on data from the non-targeted NMFS BLL sampling instead of the superior GRSC.

Response: NMFS disagrees that the catch limits implemented through this final rule are inconsistent with the requirements of the Magnuson-Sevens Act by ignoring the results of the GRSC. The stock ACL is equal to the ABC and the buffer between the OFL and ABC is intended to account for scientific uncertainty. The SEFSC developed catch projections using GRSC estimates of abundance to scale projections that initially used abundance estimates from

the most recent stock assessment (SEDAR 52). The SEFSC also developed catch level projections based on an interim analysis that used information from the NMFS BLL survey, which was similar to the approach previously used for Gulf red grouper and gray triggerfish projections. The BLL survey is specifically designed to collect data for indices of abundance for snappers (including red snapper), groupers, and other species. The Council's SSC reviewed both sets of projections at its March 30 to April 2, 2021, meeting and determined that it was appropriate to use the GRSC-based interim analysis to specify the OFL at 25.6 million lb (11.6 million kg). Despite the groundbreaking advances of the GRSC, the Council's SSC identified some limitations and caveats of the study that they concluded warranted further investigation and consideration when determining the applicability of this information to inform catch level recommendations. Thus, the Council's SSC did not make an ABC recommendation based on the GRSC-informed interim analysis, but instead used the BLL interim analysis and provided an ABC recommendation of 15.4 million lb (7.0 million kg). As explained in response to *Comment 2*, NMFS is currently reviewing proposed regulations submitted by the Council that would decrease the OFL but increase the ABC. These proposed regulations are based on new SSC recommendations after reviewing updated GRSC information, and would set the stock ACL 14 percent below the OFL.

Comment 13: NMFS has already certified the state recreational data collection programs, including those in Mississippi and Alabama, so why is calibration required for those states.

Response: Through the MRIP peer review process, NMFS has certified various state survey designs as statistically valid with some critical assumptions. However, different certified survey designs, with different critical assumptions, can produce consistently different catch estimates. The calibrations are necessary to reconcile differences between two sets of estimates and allow for a direct comparison between each state's ACL and the landings estimates produced by that state's survey.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the framework actions, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf, Red snapper, Reef fish, Quota.

Dated: November 22, 2022.

Samuel D. Rauch, III
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.23, revise paragraph (a)(1)(ii) to read as follows:

§ 622.23 State management of the red snapper recreational sector private angling component in the Gulf EEZ.

(a) * * *

(1) * * *

(ii) *State private angling component ACLs.* All ACLs specified below are in round weight and are consistent with monitoring under the respective state's reporting system. Equivalent ACLs, consistent with monitoring under the Federal reporting system, are provided, as applicable. If a state's delegation is suspended, as described in paragraph (a)(1) of this section, the Federal equivalent ACL, or for the Texas regional management area the ACL in paragraph (a)(1)(ii)(E) of this section, applies in the EEZ off that state.

(A) *Alabama regional management area* - 558,200 lb (253,195 kg); Federal equivalent - 1,145,026 lb (519,375 kg) .

(B) *Florida regional management area* - 2,069,053 lb (938,507 kg); Federal equivalent - 1,951,569 lb (885,217 kg).

(C) *Louisiana regional management area* - 882,443 lb (400,269 kg); Federal equivalent - 832,493 lb (337,612 kg).

(D) *Mississippi regional management area* - 59,354 lb (26,923 kg); Federal equivalent - 154,568 lb (70,111 kg).

(E) *Texas regional management area* - 270,386 lb (122,645 kg).

* * * * *

3. In § 622.39, revise paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Commercial quota for red snapper - 7,854,000 lb (3,562,514 kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper* - (A) *Total recreational*. The total recreational quota is 7,546,000 lb (3,422,808 kg), round weight.

(B) *Federal charter vessel/headboat component quota*. The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter

vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. The Federal charter vessel/headboat component quota is 3,191,958 lb (1,447,848 kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. The private angling component quota is 4,354,042 lb (1,974,960 kg), round weight.

* * * * *

4. In § 622.41, revise the last sentence in paragraphs (q) (2) (iii) (B) and (q) (2) (iii) (C) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) * * *

(B) * * * The component ACT is 2,904,682 lb (1,317,542 kg), round weight.

(C) * * * The component ACT is 3,483,234 lb (1,579,968

kg), round weight.

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